

CALIFORNIA STATE PERSONNEL BOARD MEETING
801 Capitol Mall
Sacramento, California

Public Session Location - Room 150
Closed Session Location - Room 141

MID-MONTH BOARD MEETING MINUTES**

DECEMBER 18, 2001

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

1. ROLL CALL

BOARD MEMBERS PRESENT:

Ron Alvarado, President
William Elkins, Member
Florence Bos, Member
Richard Carpenter, Member

2. REPORT OF THE EXECUTIVE OFFICER - Walter Vaughn

The Board was advised of the following:

- A. The Department of Finance has advised that because of the projected deficit, the Governor's Budget will propose a 15% reduction in the general fund support for the State Personnel Board.
- B. The Board of Prison Terms response to the audit report has been received and will be incorporated in the final report to the Legislature.

** The Agenda for the Board can be obtained at the following Internet address: <http://www.spb.ca.gov/servicesrd.cfm>

- C. The County Supervisors Association has proposed employment of some state employees in critical local government positions by contract, to aid with the general fund deficit.
- D. The staff of the State Personnel Board will be recognized and receive awards from the United California State Employees Campaign for their substantially increased contribution and participation in the campaign.

3. REPORT OF THE CHIEF COUNSEL - Chief Counsel

The Chief Counsel reported on:

Legal News

- A. Department of Health Services v. McGinnis (2001 WL 1513224) - Third District Court of appeal has ruled, in a published opinion, that an employer is strictly liable for the sexually harassing conduct of its supervisor, even if it did not know, and did not have reason to know, of the conduct.

Litigation

- A. Punglia v. State Personnel Board (SPB)/(Department of Transportation) - First District Court of Appeal, in unpublished decision, upheld SPB's decision sustaining rejection during probation.
- B. Connerly v. State Personnel Board - Judge Connelly denied Ward Connerly's motion to disqualify him from further proceedings in the case. Connerly has filed a Memorandum of Costs.
- C. International Union of Operating Engineers (IUOE) v. State Personnel Board/Public Employee Relations Board(PERB) - The Department of Personnel Administration has requested permission to participate in IUOE's appeal of PERB's decision dismissing IUOE's complaint against SPB.

Other

- A. State Personnel Board staff has submitted regulations on discovery in non-disciplinary hearings, whistleblower retaliation, and mediation to the Office of Administrative Law.

4. REPORT ON LEGISLATION - Judy Balmain

NONE PRESENTED

BOARD ACTIONS

5. STATE PERSONNEL BOARD SUMMARY MINUTES OF DECEMBER 4, 2001

ACTION: Adopted on December 18, 2001.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

6. ADMINISTRATIVE LAW JUDGE CASES

On December 18, 2001, the Board adopted the following decisions presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

REJECTED AND REMANDED CASE

KIMBERLY S. ARNOLD, CASE NO. 00-3959

Appeal from dismissal

Correctional Officer

Department of Corrections

ACTION: Administrative Law Judge's proposed decision rejected by Board. Board to decide case itself

CHIEF COUNSEL RESOLUTIONS

SHAWN PERKINS, CASE NO. 01-2908

Appeal from rejection during probation

Department of Transportation

ACTION: Proposed decision rejected by Board and remanded to Administrative Law Judge.

AMANDA PATTI-FOX, CASE NO. 01-3689
Appeal from 5 percent reduction in salary
Department of General Services
ACTION: Stipulation for settlement approved

PROPOSED DECISIONS

EDMUND C. GAULDEN, CASE NO. 01-0028
Appeal from rejection during
probationary period
Physician and Surgeon
Solano-California State Prison
ACTION: Rejection during probationary period affirmed

GREGORY A. SMITH, CASE NO. 01-0054
Appeal from one workweek suspension
Teacher, High School-Physical Education
Department of the Youth Authority
ACTION: One workweek suspension modified to an official
reprimand which will remain in his personnel file for one
year

WILLIAM DEON, CASE NO. 01-1518
Appeal from ten percent reduction
in salary for one year
Psychiatric Technician
Department of Mental Health
ACTION: Ten percent reduction in salary for one year
sustained

KATHLYN STEVENS, CASE NO. 01-1813
Appeal from dismissal
Psychiatric Technician
Department of Developmental Services
ACTION: Taken under submission

STEVEN ESTRADA, CASE NO. 01-1942
Appeal from five percent reduction
in salary for six months
Correctional Lieutenant
Soledad-State Prison
Department of Corrections

ACTION: Five percent reduction in salary for six months sustained

JACQUELINE LOPEZ, CASE NO. 01-2447

Appeal from five percent reduction
in salary for six months

Psychiatric Technician

Porterville-Developmental Center

ACTION: Five percent reduction in salary for six months
revoked

NOEL TORIBIO, CASE NO. 01-2611

Appeal from termination of LEAP appointment

Office Assistant (General)

Avenal-State Prison

Department of Corrections

ACTION: Termination sustained

DONNA GREGGIAN, CASE NO. 01-2715

Appeal from two days suspension

Family Assistance Representative II

Human Services Agency

County of Merced

ACTION: Two days suspension sustained

EDDIE ELLIS, CASE NO. 01-2739

Appeal from suspension for 15 workdays

Correctional Officer

Wasco-State Prison

Department of Corrections

ACTION: 15 workdays suspension sustained

YOLANDA CANEDO, CASE NO. 00-4072

Appeal of discrimination/retaliation

Associate Warden

Blythe-State Prison

Department of Corrections

ACTION: Complaint of race and/or gender dismissed and
medical condition discrimination granted

MARIE-ROSE JOHNSON, CASE NO. 01-1461E

Appeal from discrimination complaint

Office Technician (Typing)

Department of Social Services

ACTION: Discrimination complaint dismissed

JAMES PLEIN, CASE NO. 01-1637

Appeal from dismissal

Correctional Officer

San Quentin-State Prison

Department of Corrections

ACTION: Dismissal sustained

EVONNIA L. JACKSON-THOMPSON, CASE NO. 01-2088

Appeal from official reprimand

Correctional Officer

San-Quentin-State Prison

Department of Corrections

ACTION: Official reprimand revoked

MICHAEL S. PITTMAN, CASE NO. 00-0537

Appeal from dismissal

Fire Captain

Department of Forestry and Fire Protection

ACTION: Dismissal modified to 30 calendar days
suspension with back pay

SULEMAN MOOSA, CASE NO. 01-2172

Appeal from ten working days suspension

Professor

California State University, Chico

ACTION: Ten working days suspension sustained

PERRIN EDGERTON, CASE NO. 97-2809B

Appeal from determination of back salary,
benefits and interest after reinstatement

Caltrans Equipment Operator

Department of Transportation

ACTION: Overtime pay, safety incentive pay, compensatory
damages and attorney fees denied. Shift differential pay
granted

THERESA HERROZ, SPB CASE NO. 01-1592

Appeal from dismissal

Youth Correctional Officer

Department of the Youth Authority

ACTION: Dismissal revoked

PETITIONS FOR REHEARING

JOHN COLEN, CASE NO. 01-2714P

Appeal from termination of
limited term appointment

Aging Program Analyst II

Department of Aging

ACTION: Petition for rehearing filed by appellant denied

MARK A. SAMS, CASE NO. 01-0987P

Appeal from five percent reduction
in salary for nine pay periods

Youth Correctional Counselor

Department of the Youth Authority

ACTION: Petition for rehearing filed by respondent
denied

EDDIE RICHARD, CASE NO. 01-2423

Appeal from 10 percent reduction
in salary for 12 months

Janitor

Department of General Services

ACTION: Petition for rehearing filed by appellant denied

EVELYN YOUNG, CASE NO. 00-3016P

Appeal from 15 working days suspension

Supervising Governmental Auditor I

Department of Aging

ACTION: Petition for rehearing filed by appellant
granted

DAVID GONZALES, CASE NO. 00-1377P

Appeal from discrimination/retaliation
in selection/appointment

Carpenter II

Delano-State Prison

Department of Corrections

ACTION: Petition for rehearing filed by respondent
denied

7. RESOLUTION RE NOTICE OF GOVERNMENT CODE SECTION 18671.1
EXTENSION

ACTION: See pages 15-18

8. WITHHOLD APPEALS

On December 18, 2001, the Board adopted the following decisions presented by Walter Vaughn, Executive Officer, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye

LISA BONNER, CASE NO. 01-2997

Classification: Correctional Officer
Department of Corrections

ACTION: DENIED

JASON CURRY, CASE NO. 01-0879

Classification: Correctional Officer
Department of Corrections

ACTION: GRANTED

ORLANDO DENISON, CASE NO. 01-0555

Classification: Cadet, CHP
California Highway Patrol

ACTION: DENIED

STEVEN GARRETT, CASE NO. 01-0696

Classification: Correctional Officer
Department of Corrections

ACTION: GRANTED

FRANK HAYLOCK, CASE NO. 01-1330

Classification: Correctional Officer
Department of Corrections

ACTION: DENIED

PHILLIP HIGGINS, CASE NO. 01-0280

Classification: Cadet, CHP
California Highway Patrol

ACTION: GRANTED

STEPHEN HORNBECK, CASE NO. 01-0910

Classification: Correctional Officer
Department of Corrections

ACTION: DENIED

ERIK LEDBETTER, CASE NO. 01-1289

Classification: Correctional Officer

Department of Corrections
ACTION: GRANTED

JASON MAY, CASE NO. 01-3096
Classification: Youth Correctional Officer
Department of the Youth Authority
ACTION: DENIED

KEVIN MCMICKLE, CASE NO. 01-0723
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

NARCISO MEDINA, CASE NO. 01-0501
Classification: Cadet, CHP
California Highway Patrol
ACTION: DENIED

DANIEL MENDOZA, CASE NO. 01-1290
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

MISTY MORALES, CASE NO. 01-1286
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

KIM SPOONER-NEVAREZ, CASE NO. 01-0633
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

SCOTT R. OTT, CASE NO. 00-4234
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

JAIME ROSAS, CASE NO. 01-0923
Classification: Youth Correctional Counselor
Department of the Youth Authority
ACTION: GRANTED

MATTHEW SODA, CASE NO. 01-1305
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

DAMIAN WALLACE, CASE NO. 01-0691
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

ONISHIA WILKES, CASE NO. 01-0893
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

JOSE ZAVALA, CASE NO. 01-0628
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

9. MEDICAL APPEALS

On December 18, 2001, the Board adopted the following decisions presented by Walter Vaughn, Executive Officer, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye

EDWARD GAFFNEY, CASE NO. 01-3525
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

GREGORY DILLON, CASE NO. 01-3000
Classification: Correctional Officer
Department of Corrections
ACTION: WITHDRAWN

JASON NOBLETT, CASE NO. 01-3097
Classification: Cadet, CHP
California Highway Patrol
ACTION: WITHDRAWN

HOLLY KOCH, CASE NO. 01-2572
Classification: Correctional Officer
Department of Corrections
ACTION: RESCINDED

10. EXAMINATION APPEALS - NONE
MINIMUM QUALIFICATIONS - NONE
MERIT ISSUE COMPLAINTS

On December 18, 2001, the Board adopted the following decisions presented by Walter Vaughn, Executive Officer, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye

(Merit Issue Complaint)

CAROLE NISHIMOTO, CASE NO. 00-4246

Classification: Recycling Specialist I

Department of Conservation

ACTION: WITHDRAWN

11. REQUEST TO FILE CHARGES CASES - NONE
PETITIONS FOR REHEARING CASES

On December 18, 2001, the Board adopted the following decisions presented by Walter Vaughn, Executive Officer, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye

(Petition for Rehearing Case)

DAVID WEIGHTMAN, CASE NO. 00-3422P

Classification: Energy Resources Spec. II

State Personnel Board

ACTION: DENIED

12. NON-HEARING CALENDAR

On December 18, 2001, the Board adopted item "A." This item

was presented by Karen Coffee, Chief, Personnel Resources and

Innovations Division, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye

- A. LICENSING REPRESENTATIVE, DEPARTMENT OF ALCOHOL
BEVERAGE CONTROL(ABC)
LICENSING REPRESENTATIVE I, ABC
LICENSING REPRESENTATIVE II, ABC
INVESTIGATOR, ABC

The Department of Alcohol Beverage Control proposes establishment of a series specification entitled Licensing Representative, ABC; revision and retitling of the class Licensing Representative, ABC, to Licensing Representative I, ABC; establishment of a new deep class entitled Licensing Representative II, ABC, with a 12-month probationary period; establishment of ARC 432; revision to the classes within the Investigator, ABC, series; and revision to ARC 276.

A D J O U R N M E N T

SUBMITTED

1. GERARDO Z. HERNANDEZ, CASE NO. 01-0220. Appeal from 15 working days suspension. Department of California Highway Patrol. (Oral argument held October 2, 2001).

NO ACTION

2. STELLA OYEKA, CASE NO. 00-1045. Appeal from rejection during probation. Franchise Tax Board. (Written testimony presented November 6, 2001).

NO ACTION

3. MARK CHAMBERLAIN, CASE NO. 01-0740B. Appeal from backpay. Department of Mental Health. (Oral argument held November 6, 2001).

NO ACTION

4. SUSAN BERGER-TULLY, CASE NO. 01-0489P. Appeal from rejection during probation. (Oral argument held November 6, 2001).

NO ACTION

5. CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION (CDF)

Appeal of the CDF from the Executive Officer's June 6, 2001 disapproval of CDF's 25 personal services contracts (contracts) with various medical providers in response to the request for review submitted by the California State Employees Association (CSEA). (Hearing held November 6, 2001).

ACTION: On December 18, 2001, adopted Board decision sustaining the Executive Officer's decision disapproving contracts for medical providers to examine firefighters who may wear respirators.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

6. CATO HALL, CASE NO. 00-1147P. Appeal from dismissal. Department of Corrections. (Oral argument held November 6, 2001).

ACTION: On December 18, 2001, adopted Board decision sustaining the non-punitive termination and modified the dismissal to suspension for 6 months.

VOTE: Elkins, Bos, Carpenter - Aye. Alvarado did not participate in voting. Harrigan to submit written dissent.

7. DOUGLAS FORS, CASE NO. 00-3180. Appeal from 6 working days or more suspension. Department of Transportation. (Oral argument held November 6, 2001).

ACTION: On December 18, 2001, adopted Board decision modifying dismissal to a 41 day suspension.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

8. GLENN FLEMING, CASE NO. 00-3709. Appeal from 6 working days or more suspension. Office of Emergency Services. (Oral argument held November 6, 2001).

ACTION: On December 18, 2001, adopted Board decision sustaining the 60 calendar days' suspension.

VOTE: Alvarado, Bos, Carpenter - Aye. Elkins - dissent.

9. CALIFORNIA ASSOCIATION OF PROFESSIONAL SCIENTISTS (CAPS) CAPS requests that individuals meet the minimum education requirements prior to transferring into Bargaining Unit 10 classifications. (Hearing held November 6, 2001).

NO ACTION

10. JUDITH BECK, CASE NO. 00-3025. Appeal from constructive medical termination. Department of California Highway Patrol. (Oral argument held November 7, 2001).

NO ACTION

11. TENILLE HABERMAN, CASE NO. 00-3990. Appeal from rejection during probation. Department of Corrections. (Oral argument held November 7, 2001).

ACTION: On December 18, 2001, adopted Board decision sustaining the rejection during probationary period.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

12. DAMON MORRIS, CASE NO. 00-3542. Appeal from dismissal. Department of the Youth Authority. (Oral argument held November 7, 2001).

ACTION: On December 18, 2001, adopted Board decision modifying dismissal to official reprimand.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

13. PSC NO. 01-05: Appeal of the International Union of Operating Engineers from the Executive Officer's June 5, 2001 Approval of Contracts between the California Department of Food and Agriculture's 22nd District Agricultural Association (DAA) and Maintenance Staffing, Inc. and A Plus Personnel, Inc. (Hearing held December 4, 2001).

ACTION: On December 18, 2001, adopted Board decision sustaining the Executive Officer's decision approving contracts for occasional custodians and laborers.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

NOTICE OF GOVERNMENT CODE § 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending

before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional 45 days, the Board hereby publishes its substantial reasons for the need for the 45-day extension for some of the cases now pending before it for decision.

An additional 45 days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than six months as of the date of the Board meeting.

GOVERNMENT CODE § 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code § 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

I hereby certify that the State Personnel Board made and adopted the preceding resolution at its meeting on December 18, 2001.

WALTER VAUGHN
Executive Officer
California State Personnel Board

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.